

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VINCENT J. ADOLPH,
Plaintiff,
v.
OZZIE KNEZOVICH and JERRY
BRADY,
Defendants.

NO. CV-08-368-EFS

ORDER DISMISSING ACTION

ozzie knezovich and jerry
brady,

Defendants.

15 Before the Court is *pro se* Plaintiff Vincent J. Adolph's First
16 Amended Complaint, which alleges constitutional violations under
17 42 U.S.C. § 1983. (Ct. Rec. [12](#).) Under the Prisoner Litigation Reform
18 Act of 1995, the Court is required to screen prisoner complaints seeking
19 relief against a governmental entity or an officer or employee of a
20 governmental entity. 28 U.S.C. § 1915A(a). Claims that are legally
21 frivolous or malicious, claims that fail to state a claim upon which
22 relief may be granted, and claims that seek monetary relief from a
23 defendant who is immune from such relief are properly dismissed. *Id.* §§
24 1915A(b) (1), (2) & 1915(e) (2). After review, the Court finds Plaintiff's
25 First Amended Complaint fails to state a claim upon which relief may be
26 granted - dismissal is proper.

1 **1. Injunctive Relief**

2 Plaintiff's First Amended Complaint seeks injunctive relief for his
3 allegedly unconstitutional living conditions at the Spokane County Jail.
4 Because Plaintiff is currently incarcerated at McNeil Island Corrections
5 Center and cannot show that he will be re-incarcerated at the Spokane
6 County Jail, injunctive relief is improper. *Diley v. Gunn*, 64 F.3d 1365,
7 1368 (9th Cir. 1995); *Darring v. Kincheloe*, 783 F.2d 874, 876 (9th Cir.
8 1986); *Nielsen v. King County*, 895 F.2d 1248, 1250 (9th Cir. 1990).

9 **2. Confinement Conditions**

10 Plaintiff's First Amended Complaint is riddled with conclusory
11 allegations regarding "dirty living conditions," "inadequate heating and
12 cooling," and "unsanitary eating areas." While detailed factual
13 allegations are not necessary to survive screening, factual allegations
14 must be enough to raise a right of relief above the speculative level.
15 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A plaintiff's
16 obligation to provide the grounds of his entitlement to relief requires
17 more than labels and conclusions.

18 Plaintiff also asserts that he was confined in lockdown for 23 hours
19 five days a week, leaving only five (5) hours total for exercise. "It
20 is undisputed that the treatment a prisoner receives in prison and the
21 conditions under which [the prisoner] is confined are subject to
22 scrutiny under the Eighth Amendment." *Helling v. McKinney*, 509 U.S. 25,
23 31 (1993). That said, conditions of confinement may, consistent with the
24 Constitution, be restrictive and harsh. *Rhodes v. Chapman*, 452 U.S. 337,
25 347 (1981). Regarding confinement length, the Ninth Circuit has
26 previously ruled that five (5) hours of exercise during the weekdays is

1 a sufficient and does not violate the Eighth Amendment. *Spain v.*
2 *Procunier*, 600 F.2d 189, 199-200 (9th Cir. 1979). Moreover, since
3 Plaintiff alleges he was confined for 226 days at the Spokane County
4 Jail, this presumably includes weekends when no lockdown was in effect.
5 In sum, these claims lack merit.

6 **3. First Amendment Claim**

7 Plaintiff alleges that he was denied Native American religious
8 programming because he was not allowed to be "led by a tribal elder."
9 He also asserts that he was denied a Native American religious diet of
10 salmon, roots, and berries while confined in the Spokane County Jail.
11 Plaintiff's requests were denied due to a lack of jail staff. Assuming
12 that Plaintiff's beliefs are sincerely held and rooted in religious
13 belief, *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008), Spokane
14 County Jail's failure to afford him access to a tribal elder and a diet
15 of salmon, roots, and berries is reasonably related to legitimate
16 penological interests - that is, effective allocation of the jail's
17 finite resources. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987);
18 *Turner v. Safley*, 482 U.S. 78, 89-90 (1987). The Court construes
19 Plaintiff's allegation to be that the jail was obligated to furnish him
20 with a tribal elder, not that a tribal elder sought to visit Plaintiff
21 at the jail on a particular date, and that such visitation was denied.
22 It would also be impractical to expect the jail to have a ready and
23 available supply of salmon, roots, and berries to accommodate the dietary
24 needs of the presumably limited number of Native American inmates in the
25 jail who seek to strictly adhere to such a diet.

26

4. Failure to Respond to Grievances

Plaintiff again alleges that jail officials do not respond to his grievances. The Court previously informed Plaintiff that a jail's failure to respond to grievances does not amount to a constitutional violation. *Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991).

5. Claim Restrictions

Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three(3) or more civil actions or appeals which are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory provisions under 28 U.S.C. § 1915 because this dismissal may count as one of the three (3) dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file future claims.

16 Accordingly, IT IS HEREBY ORDERED: Plaintiff's First Amended
17 Complaint (Ct. Rec. 13) is DISMISSED with prejudice.

IT IS SO ORDERED. The District Court Executive is directed to:

1. enter this Order;
 2. forward a copy to Plaintiff at his last known address;
 3. enter judgment of dismissal with prejudice;
 4. close the file; and
 5. forward a copy of this Order to the Office of the Attorney General of Washington, Criminal Justice Division.

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IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward a copy to Plaintiff.

DATED this 30th day of March 2009.

s/Edward F. Shea
EDWARD F. SHEA
United States District Judge

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